

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 550 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI M PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PM VYAS for the appellant
MR BD DESAI, APP for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 03/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

In this appeal, which is filed under section 374(2) of the Code of Criminal Procedure, 1973, the appellant has questioned his conviction under section 302 of the Indian Penal Code as well as sentence of life imprisonment imposed on him by the learned Additional Sessions Judge, Valsad at Navsari vide judgment dated April 28, 1994 rendered in Sessions Case No. 81/92.

2. Complainant Rekhaben Balubhai Parshottambhai was, at the relevant time, studying in Std. 10 of Uttar Buniyadi Highschool. On completion of her examination, she had come to her native place and was residing at Kuva Faliya of village Tejlav, Taluka : Chikhali, District : Valsad with her deceased father, mother and other family members. Deceased Balubhai had three brothers, one of whom Manubhai had expired and the appellant is son of Shri Manubhai. The appellant with her mother, wife and children was residing near the house of complainant Rekhaben. According to the prosecution, ancestral land belonging to the family was partitioned between the deceased and his brothers and after partition, each one was managing affairs of land which had come to his respective share. In the land, which had come to the share of the deceased, a mango tree was grown and crop of mango was divided equally between the deceased and his brothers. In the year 1992 also, mango crop was grown, but the appellant had a suspicion that the deceased was taking away the whole crop and had, therefore, threatened the deceased with dire consequences. On learning about the threat administered by the appellant, the deceased had stopped harvesting mangoes. The incident in question took place on July 7, 1992 at about 7.30 in the morning. At that time, the appellant came near the house of the complainant from his house hurling filthy abuses at the deceased. Because of hue and cry raised by the appellant, the deceased, his wife and daughter Rekhaben came out of their house and found that the appellant was standing near the door of their house with an axe in his hands. The deceased and his wife informed the appellant that they had not harvested the crop of mangoes and, therefore, they should not be abused, but the appellant assaulted the deceased by means of an axe which he was having and caused injuries on different parts of person of the deceased, such as, near eyebrow, parietal region, ear, back, neck etc. As the appellant assaulted the deceased, complainant raised shouts and, therefore, Chhotubhai Bijiyabhai, Bhulabhai Bijiyabhai, Prabhubhai Dahyabhai and others came rushing to the place of incident, but the appellant threatened them with dire consequences, as a result of which, none could intervene

to save the deceased. Because of serious injuries sustained by him, the appellant fell down on the ground and thereafter the appellant ran away from the place of incident with weapon of offence. Rekhaben asked witness Chhotubhai Bijiyabhai to inform the Deputy Sarpanch and on receipt of information from Chhotubhai, Deputy Sarpanch Shri Babubhai Patel came to the place of incident. After learning about the incident from complainant Rekhaben and Shantaben- wife of the deceased, the Deputy Sarpanch took them to Chikhali Police Station, where First Information Report lodged by Rekhaben was registered by P.S.I. Mr. V.D.Rathod. The Investigating Officer held inquest on the dead body and sent the body to Chikhali Group Health Centre, where autopsy on the dead body of the deceased was performed by Dr. Maheshbhai Jayantilal. On July 7, 1992 at about 4.30 in the evening, the appellant surrendered to police with blood stained axe as well as blood stained pantaloons which was put on by him at the time of incident. Those articles were seized in presence of panch witness Chhatrapal Bhikhabhai. At the conclusion of investigation, the respondent was chargesheeted for the offences punishable under sections 302, 504 & 506(2) of the Indian Penal Code. As the offence punishable under section 302 I.P.C. is exclusively triable by the Court of Sessions, the case was committed to Sessions Court, Valsad at Navsari for trial, where it was numbered as Sessions Case No. 81/92. The charge was framed against the appellant for the offences punishable under sections 302, 504 & 506(2) of the Indian Penal Code. The charge was read over and explained to the appellant, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined; (1) Dr. Maheshbhai Jayantilal as P.W.1 at Exh.6, (2) Chandubhai N. Patel as P.W.2 at Exh.9, (3) Maheshbhai Nemabhai as P.W.3 at Exh.11, (4) Chhatrapal Bhikhabhai as P.W.4 at Exh.13, (5) Kanubhai Mervanbhai as P.W.5 at Exh.15, (6) Rekhaben B.Patel, as P.W. 6 at Exh.17, (7) Chhotubhai Bijiyabhai as P.W.7 at Exh.19, (8) Shantaben Balubhai as P.W.8 at Exh.20, (9) Bhulabhai Bijiyabhai as P.W.9 at Exh.21, (10) Parbhubhai Dahyabhai as P.W.10 at Exh.23, (11) Babubhai M. Patel as P.W.11 at Exh.24, and (12) Vikrambhai D.Rathod, as P.W.12 at Exh.25, and also produced documentary evidence, such as, postmortem notes of the deceased prepared by Dr. Maheshbhai, inquest report, complaint filed by Rekhaben, panchnama prepared regarding production of axe by the appellant etc. to prove its case against the appellant. After recording of evidence of prosecution witnesses was over, the learned Judge recorded further statement of the appellant under section 313 of the Code of Criminal Procedure. In his further

statement, the appellant denied the case of the prosecution, but did not examine any witness in support of his defence.

3. On appreciation of evidence led by the prosecution, the learned Judge held that it was proved by the prosecution that the deceased died a homicidal death and the injuries caused to him were sufficient in the ordinary course of nature to cause his death. The learned Judge referred to the evidence of witness Rekhaben, witness Chhotubhai as well as witness Shantaben and concluded that their reliable evidence proved it beyond reasonable doubt that on the date of incident, the appellant had caused different injuries on the person of the deceased by means of an axe. The learned Judge further referred to the report of Serologist and held that presence of same blood group as that of the deceased on the pantaloons of the appellant, which he had put on at the time of occurrence of the incident as well as the axe produced by him in presence of panch witness, proved that the appellant was in the vicinity of the deceased at the time of incident and had opportunity of inflicting injuries on the deceased. In view of the above-referred to conclusions, the learned Judge held that the appellant is guilty under section 302 of the Indian Penal Code and has sentenced him to life imprisonment by judgment dated April 28, 1994, giving rise to the present appeal.

4. Mr. P.M.Vyas, learned counsel for the appellant after taking us through the entire evidence on record submitted that there is nothing on record to indicate that at the time of incident, witness Rekhaben was enjoying vacation at her native place and as she would be prosecuting her studies and would not have been present in the village, her evidence should not have been believed by the learned Judge. The submission which was made by the learned counsel for the appellant was that conduct of complainant Rekhaben as well as wife of the deceased was most unnatural, as they had not attempted to save the deceased at all and therefore, their testimonies should not have been believed by the learned Judge for convicting the appellant under section 302 of the Indian Penal Code. Stress was laid by the learned counsel for the appellant on the circumstance that because of disputes relating to sharing of crop of mangoes, the witnesses had deposed falsely against the appellant and, therefore, the appeal should be accepted. The learned counsel referred to omissions appearing in the evidence of complainant Rekhaben and her mother Shantaben as well as witness Chhotubhai and contended that as testimonies of witnesses are not reliable, the appeal should be

allowed.

5. Mr. B.D.Desai, learned counsel for the State Government urged that Rekhaben, who is daughter of the deceased, had deposed before the Court in a straight forward manner and as her evidence is truthful, the learned Judge did not commit any error in placing reliance on her deposition. According to the learned A.P.P., the case against the appellant under section 302 I.P.C. is clearly made out by sworn testimony of complainant Rekhaben, which is corroborated by the testimony of Shantaben as well as Chhotubhai Bijiyabhai and, therefore, the appeal being substanceless should be dismissed. The learned counsel emphasized that the appellant had acted in a cruel manner by inflicting several blows with an axe on the deceased and the case having been proved against him by reliable evidence of prosecution witnesses, conviction recorded as well as sentence imposed by the learned Judge should be upheld.

6. We have heard the learned counsel for the parties and taken into consideration the evidence on record. The evidence of Dr. Maheshbhai Jayantilal, who performed postmortem on the dead body of the deceased and the contents of postmortem notes establish beyond reasonable doubt that the deceased had died a homicidal death. According to Dr. Maheshbhai, the deceased had sustained as many as 9 injuries on different parts of his body and the injuries caused to the deceased were sufficient in the ordinary course of nature to cause his death. The Medical Officer was shown muddamal article no.4, which was an axe and after looking at the axe, the Medical Officer opined that the injuries found on the dead body of the deceased were possible by the said axe. Though the Medical Officer was cross-examined on behalf of the defence, nothing could be brought on record of the case so as to doubt his version as given by him in his examination-in-chief. The witness is supported by contemporary record viz. postmortem notes and, therefore, we have no hesitation in holding that the deceased had died a homicidal death.

7. The evidence of Rekhaben B. Patel, P.W.6, Exh.17 shows that at the relevant time she was residing with her deceased father because vacation had ensued on completion of examination. Referring to the incident in question, witness Rekhaben has in a straight forward manner, but firmly stated before the Court that the appellant had come near her house and had started abusing her father in filthy language. The witness has maintained before the Court that on hearing filthy abuses, she, her deceased

father and her mother had come out of their house and her deceased father had informed the appellant that he had not harvested the mango crop, but the appellant had immediately assaulted his deceased father by means of an axe on different parts of his body and killed him. The witness has also deposed before the Court that on hearing shouts, Chhotubhai Bijiyabhai, Bhulabhai Bijiyabhai, Parbhubhai Dahyabhai etc. had come to the place of incident, but they could not intervene to save her deceased father because of the threats administered by the appellant. The witness has further informed the Court that thereafter she in the company of her mother and Sarpanch had gone to Chikhali Police Station where her complaint was reduced into writing. This witness has been searchingly cross-examined on behalf of the defence, but nothing could be elicited so as to destroy her version of the incident as given by her in examination-in-chief. The witness stands corroborated by contemporary document viz. complaint lodged by her with Chikhali Police Station. Though some minor omissions have been brought on record during her cross-examination, the omissions are inconsequential and do not affect the substratum of prosecution case. This witness Rekhaben is not only corroborated by her complaint, but she is also corroborated in material particulars by the evidence of her mother Shantaben as well as witness Chhotubhai and sarpanch Babubhai. Further the evidence of Rekhaben Patel is corroborated in material particulars by the evidence of Dr. Maheshbhai Jayantibhai as well as contents of postmortem notes which indicates that the deceased had sustained injuries on different parts of body as stated by her in her testimony. Witness Shantaben, who is wife of the deceased, has stated in her evidence that on the date of the incident, the appellant was filthily abusing the deceased and the appellant had caused injuries to her husband by means of an axe. Similarly, witness Chhotubhai has also supported the case of Rekhaben and her mother Shantaben that the appellant had assaulted the deceased by means of an axe. All these witnesses have been cross-examined on behalf of the defence, but nothing could be brought on record, which would cast a doubt on their version of incident as given in examination-in-chief. Though some witnesses viz. Bhulabhai Bijiyabhai and Parbhubhai Dahyabhai have turned hostile, their evidence does not affect the case of eye witnesses at all because they have been contradicted with their earlier police statements. On overall view of the matter, we are satisfied that the case against the appellant is proved beyond reasonable doubt by the prosecution through the sworn testimony of Rekhaben, her mother Shantaben and witness Chhotubhai Bijiyabhai. It

is relevant to notice that these eye witnesses are closely related to the deceased and, therefore, they would not allow the real culprit to go scot free and involve the appellant, who is related to them, falsely in such a serious case. Presence of witnesses at their house is natural and, therefore, there is no reason to disbelieve their sworn testimony which has passed the test of cross-examination. In our confirmed view, the learned Judge did not commit any error in relying upon sworn testimonies of the eye witnesses for convicting the appellant under section 302 I.P.C. There is one more important dimension of the case. As observed earlier, the appellant had surrendered before the police officer of Chikhali Police Station with axe. In presence of panch witness Chhatrapal Bhikhabhai, blood stained pantaloons which were put on by the appellant at the time of commission of the offence and blood stained axe were attached and sent for analysis. The report of Serologist indicates that the pantaloons which were put on by the appellant as well as the axe produced by him had the same blood group as that of the deceased. This is an incriminating circumstance. The finding of same group of blood on pants and axe would establish that the appellant was in the vicinity of the deceased when he was fatally wounded and the appellant had opportunity of commission of crime. Thus, circumstantial evidence also goes against the appellant. On overall view of the matter, we are of the opinion that the learned Judge has rightly convicted the appellant under section 302 of I.P.C. and no case is made out by the appellant to interfere with the same in the present appeal.

8. The net result of the above discussion is that we do not find any merit in the appeal and the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. The muddamal articles are to be disposed of in terms of directions stipulated in the impugned judgment.

(J.M.Panchal, J.)

(S.D.Dave, J.)

(patel)